

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. STAFFORD,)	
)	
Plaintiff,)	4:08CV3010
)	
v.)	
)	
CORRECTIONAL OFFICER TERESA)	MEMORANDUM AND ORDER
KOEHLER,)	
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion for leave to file out of time (Filing No. [21](#)). Also pending are two motions for default judgment filed by plaintiff (Filing Nos. [17](#) and [19](#)), plaintiff's motion for defendant to forward all motions (Filing No. [25](#)), and defendant's motion to dismiss (Filing No. [22](#)).

In the motion for leave to file out of time, defendant's counsel states that he shattered his ankle and was out of the office for a period of time (Filing No. [21](#)). During this time, defendant's counsel believed that the motion to dismiss and supporting brief were filed, but they were not. (*Id.*) The responsive pleading was eventually filed on August 27, 2008 (Filing No. [22](#)). For good cause shown, the motion for leave to file out of time will be granted and the motion to dismiss is deemed timely filed. Because defendant has filed a timely response to the complaint, plaintiff's two motions for default judgment will be denied.

In his motion for defendant to forward all motions, plaintiff states that he has not received a copy of the motion to dismiss or brief in support (Filing No. [25](#)). Although these documents include a certificate of service stating that they were mailed to plaintiff, the Court is concerned that, due to counsel's absence, the mailing of these documents was also overlooked. In light of this, defendant shall immediately send a copy of the motion to dismiss and brief in support to plaintiff at his last known address. On the Court's own motion, plaintiff shall have until February 2, 2009, to file a response to the motion to dismiss. In the event that plaintiff fails to file a response by that date, the Court will rule on the motion to dismiss without further notice.

IT IS ORDERED:

1. Defendant's motion for leave to file out of time (Filing No. [21](#)) is granted. The motion to dismiss is deemed timely filed.
2. Plaintiff's motions for default judgment (Filing Nos. [17](#) and [19](#)) are denied.
3. Plaintiff's motion for defendant to forward all motions (Filing No. [25](#)) is granted. Defendant shall immediately send a copy of the motion to dismiss and brief in support to plaintiff at his last known address.

4. Plaintiff shall have until February 2, 2009, to file a response to the motion to dismiss. In the event that plaintiff fails to file a response by that date, the Court will rule on the motion to dismiss without further notice.

5. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: February 2, 2009: motion to dismiss ready for decision.

DATED this 18th day of December, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court